

**(2019) 08 CHH CK 0138**

**Chhattisgarh High Court**

**Case No:** Criminal Miscellaneous Petition (CRMP) No. 1512 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Dilip Verma

RESPONDENT

**Date of Decision:** Aug. 21, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 323, 376(2)(Dha), 506
- Protection Of Children From Sexual Offences Act, 2012 - Section 6

**Hon'ble Judges:** Prashant Kumar Mishra, J; Gautam Chourdiya, J

**Bench:** Division Bench

**Advocate:** Pawan Kesharwani,

**Final Decision:** Dismissed

**Judgement**

Prashant Kumar Mishra, J

1. On due consideration, delay of 81 days in filing the CRMP is condoned. Accordingly, IA No.1/2019 is allowed.

2. The Trial Court has acquitted the accused of the charges under Sections 376 (2) (Dha), 323 & 506 (Part-II) of IPC and Section 6 of the POCSO

Act, 2012.

3. The prosecutrix is the real sister of accused. She lodged written complaint on 04.03.2018 stating that her brother has subjected her to forcible

sexual intercourse for last 3-4 years and at about 8 pm on 01.03.2018, he reached the house in state of intoxication and instructed her to undress,

which was resisted by her, whereupon he started to forcibly undress her. The prosecutrix ran away and informed the incident to her mother PW-8

Dropati Verma and brother PW-7 Ram Bharosa Verma, as these two persons were present in the house at the time of incident. According to the prosecutrix, her sister was also present in the house at the time of incident.

4. Although, the prosecutrix has deposed against the accused, but two other family members namely her brother PW-7 Ram Bharosa Verma and mother PW-8 Dropati Verma have not supported the prosecution. There is evidence on record that the prosecutrix had performed love marriage with some other boy of the village in August, 2018. The prosecutrix was suggested that due to her intimacy with so many boys, the accused was objecting to her conduct, therefore, she has lodged the false report. Although this suggestion has been denied by the prosecutrix but at one stage of her cross-examination, she admits that at the time of Diwali Festival, the accused had assaulted her. This admission of the prosecutrix lends support to the defence of the accused that the prosecutrix was frequently moving with other boys in the village, therefore, the accused was objecting to her conduct.

Coupled with this, the other family members are also not supporting the prosecution, therefore, taking a cumulative view of the entire evidence, it appears probable that the prosecutrix was annoyed with her brother because he was objecting to her free movement and association with other boys, which may include the boy with whom she was in love and later performed marriage with him in August, 2018. This being one possible view in the matter, the Trial Court's finding giving benefit of doubt to the accused does not appear to be wholly perverse.

5. In view of the settled legal position that when two views are possible and the Trial Court has taken one possible view in the matter, the High Court may not take the other view while hearing appeal against acquittal, we are not inclined to grant leave to appeal.

6. Accordingly, the CRMP is dismissed.